



# **DAVID CULLEN**

## **STATE REPRESENTATIVE**

**Testimony in Support of AB 27**  
Assembly Committee on Criminal Justice  
*Representative David Cullen*  
March 5, 2009

**Representative Turner and members of the committee, thank you for the opportunity to appear before you today in support of 2009 Assembly Bill 27, relating to the definition of sexual intercourse for the crime of incest.**

**Before I get started, I have provided a letter in support of Senate Bill 14, the companion bill to AB 27, from the office of Milwaukee County District Attorney John Chisholm, as well as a letter of support from Attorney General JB Van Hollen.**

**Milwaukee County District Attorney John Chisholm approached me about drafting the bill in response to a very unfortunate case his office attempted to prosecute. The case involved a man who was sexually assaulting his developmentally disabled adult daughter.**

**The man's actions in this case were abhorrent – and discretion won't allow me to discuss them with you here today. However,**

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**what he did to his daughter was wrong and charges were brought against him, including a charge of incest.**

**In the course of trying the case, the district attorney's office pointed to the man's actions and attempted to convince the jury that what he had done amounted to, among other things, incest.**

**However, there is a shortcoming in our current law against incest that AB 27 attempts to address.**

**When the charge of incest involving the actions of two adults is prosecuted, what s. 944.06 requires is "marriage" or "nonmarital sexual intercourse." However, the definition of "sexual intercourse" for s. 944.06 is a cross-reference to s. 939.22. In s. 939.22(36), this is the definition of sexual intercourse: *"sexual intercourse requires only vulvar penetration and does not require emission."***

**What the man in this case did to his adult daughter, who was clearly the victim of an assault, did not entail vulvar penetration and because of this, and given the limitations of the definition of "incest" in s. 944.06, the jury could not find him guilty of "incest." To make matters worse, the man was found innocent of all charges against him.**

**We do not have similar shortcomings in current law when charges of incest involve a child victim. Under s. 948.06, the crime of incest with a child uses a definition for “sexual intercourse” found in s. 948.01(6):**

*“Sexual intercourse” means vulvar penetration as well as cunnilingus, fellatio or anal intercourse between persons or any other intrusion, however slight, of any part or a person’s body or of any object into the genital or anal opening either by the defendant or upon the defendant’s instruction. The emission of semen is not required.”*

**Again, s. 948.06 only covers incest with a child. Assembly Bill 27 simply expands what constitutes the crime of “incest” as found in s. 944.06 by using the definition of “sexual intercourse” found in s. 948.01(6).**

**We do not increase the penalty for incest in 944.06, which is currently a Class F felony. [s. 939.50(3)(f) Class F felony: a fine not to exceed \$25,000 or imprisonment not to exceed 12 years and 6 months, or both.]**

**All we do in the bill is cross reference a more comprehensive definition of “sexual intercourse” that is already in current law...a definition which would have covered the man’s actions**

**against his adult daughter in the case which prompted this legislation.**

**Again, thank you for allowing me to testify today in support of 2009 Assembly Bill 27. I'd be happy to answer any questions you might have.**



# JULIE LASSA

## STATE SENATOR

March 5, 2009

Chairman Robert Turner  
Assembly Committee on Criminal Justice  
328 Northwest  
State Capitol

Dear Chairman Turner and Committee Members,

Thank you for allowing me the opportunity to provide written testimony in favor of Assembly Bill 27, which will change the definition of "sexual intercourse" when considering the crime of incest.

In a very disturbing case which led to this suggested change, a man was arrested for sexually assaulting his developmentally disabled adult daughter. In the process of bringing charges against the man, the crime of incest was included.

However, under current law pertaining to incest involving adults, only vulvar penetration can be considered "sexual intercourse." Elsewhere in current law, sexual intercourse is defined in terms that go beyond vulvar penetration and would have been applicable in this particular case -- except for the fact that the victim was an adult child of the accused.

Because of the limitations under current law, the man accused of improper sexual relations with his adult daughter could not be found guilty of incest because there was no vulvar penetration involved.

Assembly Bill 27 changes the definition for sexual intercourse for the crime of incest by cross-referencing the definition found elsewhere in current law, specifically the definition of "sexual intercourse" found in s. 948.01. The bill simply makes this definition uniform for the purposes of defining incest under s. 944.06.

I am pleased that both Attorney General J.B. Van Hollen and Milwaukee County District Attorney John Chisholm support this legislation. The Senate companion to AB 27, Senate Bill 14, recently passed unanimously in the Senate Committee on Judiciary, Corrections, Insurance, Campaign Finance Reform, and Housing. This legislation also passed on a voice vote in the Senate last session.

Again, thank you for the opportunity to share my support of Assembly Bill 27. If you have any questions, please feel free to contact me at (608) 266-3123.

Sincerely,

A handwritten signature in cursive script that reads "Julie Lassa".

JULIE LASSA  
State Senator  
24<sup>th</sup> Senate District



**STATE OF WISCONSIN  
DEPARTMENT OF JUSTICE**

**J.B. VAN HOLLEN  
ATTORNEY GENERAL**

**Raymond P. Taffora  
Deputy Attorney General**

MAR 05 2009

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March 4, 2009

TO: The Honorable Members of the Assembly Committee on Criminal Justice

FR: Mark Rinehart, Legislative Liaison

RE: 2009 Assembly Bill 27

Dear Representatives:

Last month, the Senate Committee on Judiciary, Corrections, Insurance, Campaign Finance Reform, and Housing held a public hearing on Senate Bill 14, the Senate companion bill to Assembly Bill 27, relating to the definition of sexual intercourse for the crime of incest.

The Attorney General is in favor of amending current law as proposed in AB 27 and SB 14. Please find attached the Attorney General's letter to the Senate Judiciary Committee supporting SB 14.



STATE OF WISCONSIN  
DEPARTMENT OF JUSTICE

J.B. VAN HOLLEN  
ATTORNEY GENERAL

Raymond P. Taffora  
Deputy Attorney General

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February 5, 2009

TO: The Honorable Members of the Senate Committee on Judiciary, Corrections, Insurance,  
Campaign Finance Reform, and Housing

FR: Attorney General J.B. Van Hollen

RE: 2009 Senate Bill 14

Dear Senators:

I am writing to express my support of 2009 Senate Bill 14, relating to the definition of sexual intercourse for the crime of incest. This bill is necessary to prohibit incest involving male victims.

Under § 944.06, Wisconsin's Incest Statute, whoever marries or has nonmarital sexual intercourse with certain blood relatives is guilty of a Class F felony. However, § 944 utilizes the definitions found in § 939.22. Under § 939.22 (36) the definition of "sexual intercourse" reads: "'Sexual intercourse' requires only vulvar penetration and does not require emission."

Senate Bill 14 amends § 944.06 to eliminate disparate treatment of female and male victims. It does this by adopting the definition of "sexual intercourse" found in § 948.01. Section 948.01(6) provides, "'Sexual intercourse' means vulvar penetration as well as cunnilingus, fellatio or anal intercourse between persons or any other intrusion, however slight, of any part of a person's body or any object into the genital or anal opening either by the defendant or upon the defendant's instruction. The emission of semen is not required."

The problem with the current language of § 944.06 is exemplified by a recent case from Southeast Wisconsin. In 2007, the Racine County District Attorney charged two brothers with incest. The brothers argued that § 944.06 does not apply to their conduct because its terms refer only to female anatomy. Adopting their position and applying the statute's plain language, the Racine County Circuit Judge dismissed the criminal complaint against the brothers. The Racine County District Attorney then asked the Department of Justice to appeal. Upon review, the department felt it had no choice but to decline the request to appeal. Undoubtedly, a court of appeals would have concluded that the plain language of §§ 944.06 and 939.22 controlled and under existing statutes, only females can be victims of incest.

Though that case can not be reversed, SB 14 will correct the likely unintentional distinction between female and male victims of incest so that, in the future, such acts can be charged under the Incest Statute. I urge you to pass SB 14. Thank you.



## OFFICE OF THE DISTRICT ATTORNEY

*Milwaukee County*

JOHN T. CHISHOLM • District Attorney

Chief Deputy Kent L. Lovern, Deputies James J. Martin, Patrick J. Kenney, Lovell Johnson, Jr., Jeffrey J. Altenburg

February 4, 2009

Representative David Cullen  
State of Wisconsin

Re: Legislation to Amend Wis. Stat. sec. 944.06, Incest

Dear Rep. Cullen:

Under current Wisconsin law, Wis. Stat. sec. 944.06 (Incest), it is a crime for an adult to have "sexual intercourse" with another adult he or she knows is a blood relative and such relative is related in a degree within which the marriage of the parties is prohibited.

"Sexual intercourse," for the crime of incest, means "penetration of the genital organ of the female by the penis of the male." This definition is found in Wis. Stat. sec. 939.22(36).

The definition of "sexual intercourse" in sec. 939.22(36) is not consistent with the definitions of "sexual intercourse" found in the sexual assault statute, Wis. Stat. sec. 940.225(5)(c), and the child sexual assault statutes, Wis. Stat. sec. 948.01(6). For purposes of those crimes, "sexual intercourse" means vulvar penetration as well as cunnilingus, fellatio or anal intercourse.

Under current Wisconsin law, if two adults, who are blood relatives to a degree within which marriage is prohibited, engage in anal intercourse, cunnilingus, or fellatio, the crime of Incest has not been committed. I am of the opinion that the definition of "sexual intercourse" in 939.22(36) should be amended to include "cunnilingus, fellatio or anal intercourse." Such an amendment would make the definition of "sexual intercourse" consistent throughout the criminal statutes and would criminalize the above described behavior which, I believe, our community is not willing to condone.

Thank you,

Sincerely yours,

John Chisholm  
District Attorney

Thomas A. Schult  
Alexander G. Sidenz  
William J. Moller  
Donald S. Jackson  
Calc C. Sholtz  
Gary D. Mahkam  
David Robles  
Doug Tamara  
Douglas J. Simpson  
Cynthia G. Brown  
Norman A. Gahn  
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